



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 9, 1993

Mr. Arnoldo G. Garza
Mr. Timothy E. Weitz
Texas State Board of Medical Examiners
P.O. Box 149134
Austin, Texas 78714-9134

OR93-443

Dear Mr. Garza and Mr. Weitz:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 19765.

The Texas State Board of Medical Examiners (the "board") has received a request from an attorney representing a doctor who is the subject of an investigation by the board. Specifically the requestor seeks:

1. All documents and tangible things that have been made or prepared by any person relating to [the doctor].

2. All documents and tangible things, specifically reports, audits, evaluations, investigations, complaints to the Board, in possession of the board concerning [the doctor].

....

7. All documents received by the Board and correspondence and attachments to members of the Board subsequent to 1985 relating to [the doctor].

You claim the requested information is excepted from disclosure under sections 3(a)(1) and 3(a)(11) of the Open Records Act.¹

¹Although the requestor's complete request for records includes nine enumerated items, you have stated that only items numbered 1, 2, and 7 are in contention. We assume the remainder of the information has been or will be released to the requestor.

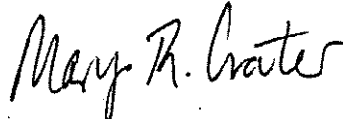
Section 3(a)(1) excepts "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Section 4.05(d) of article 4495b, V.T.C.S., provides in part:

All complaints, adverse reports, investigation files, other investigation reports, and other investigative information in the possession of, received or gathered by the board or its employees or agents relating to a licensee, an application for license, or a criminal investigation or proceedings are privileged and confidential and are not subject to discovery, subpoena, or other means of legal compulsion for their release *to anyone* other than the board or its employees or agents involved in licensee discipline. . . . [Emphasis added.]

The requested information is clearly confidential under this provision. It is apparent from the language of the statute that the information is not to be released "to anyone," including the licensee involved.² Accordingly, you must withhold the requested information under section 3(a)(1) as "information deemed confidential by law" pursuant to V.T.C.S. article 4495b, section 4.05(d). Because we answer your request under section 3(a)(1), we will not address your section 3(a)(11) argument.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

²We note that Open Records Decision No. 458, issued on February 13, 1987, reached the conclusion that the intent of section 4.05(d) was to shield the identities of licensees against whom complaints are filed and that it did not protect non-identifying information. Section 4.05(d), however, was amended later that same year to include the language that information is "confidential and [is] not subject to discovery, subpoena, or other means of legal compulsion for [its] release *to anyone* other than the board or its employees or agents involved in licensee discipline." Acts 1987, 70th Leg., ch. 596, § 9, at 2331 (emphasis added). The amending act also added language providing an exception from confidentiality for disclosure to law enforcement entities conducting criminal investigations. See V.T.C.S. art. 4495b, § 4.05(d). Clearly the statute as amended is intended to protect more than the identity or privacy of the subject of a complaint. Cf. V.T.C.S. art. 6252-17a, § 3B (special right of access provision).

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Mr. Timothy E. Weitz

MRC/LBC/lmm

Ref.: ID# 19765

Enclosures: Submitted documents

cc: Mr. Ace Perkins
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(w/o enclosures)